

# Pacific Perspectives

Convention on the Rights of  
Persons with Disabilities:  
Overview of Compliance in Pacific  
Islands Legislation



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## Convention on the Rights of Persons with Disabilities:

### Overview of Compliance in Pacific Islands Legislation

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# SUMMARY

This issue of Pacific Perspectives is an abridged version of a regional report commissioned by United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) in 2020 on legislative compliance with the Convention on the Rights of Persons with Disabilities (CRPD) in the Pacific. The issue is intended for the wider public to better understand the nature and extent of discrimination against persons with disabilities that currently exists in constitutional and legislative frameworks in the Pacific as well as the opportunities and options for reforms to address it.

Discrimination is found across all Pacific jurisdictions reviewed, ranging from the use of discriminatory language that perpetuates stereotypes and stigma, to direct discrimination by exclusion, restrictions or denial of fundamental rights and freedoms, discrimination by omission when sectoral laws are not disability inclusive as well as indirect discrimination when seemingly neutral laws have a negative impact on persons with disabilities. Many compliance issues are identified across multiple and diverse areas of law, including the lack of accessibility requirements as well as reasonable and procedural accommodation requirements, and denial of legal capacity. Women and girls with disabilities are particularly susceptible to discrimination due to the intersectional vulnerability related to their gender and disability.

However, progress has been made in the region, not least with most countries ratifying the Convention, and thus being obliged to ensure and promote the full realization of human rights and fundamental freedoms for persons with disabilities without discrimination of any kind (Article 4). These obligations include “modify[ing] and abolish[ing] existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities” and “adopt[ing] all appropriate legislative ... measures for the implementation of the rights recognized” under the Convention. Opportunities and pathways exist for all countries, regardless of the extent of non-compliance in current legislative frameworks. They can consider enacting a standalone disability law, mainstreaming disability across the entire legislative framework, or doing both by following a twin-track approach. Whichever option countries choose, reforms are urgently needed and can be a powerful tool to begin the process of eliminating the deep-rooted and longstanding discrimination that has been inflicted on persons with disabilities in the region.



# INTRODUCTION

The first human rights Convention of the twenty-first century, the Convention on the Rights of Persons with Disabilities (CRPD, or Convention) represents a critical paradigm shift in disability from care, charity and protection to rights and equality. It reaffirms the fact that persons with disabilities are entitled to all human rights and fundamental freedoms on an equal basis with other persons. In the Pacific region, all countries have signed and most have ratified the CRPD, signalling a strong commitment to disability rights.

The Convention includes more than 30 substantive rights-related Articles that cover specific rights (civil, political, economic and social), enabling measures, international cooperation, national implementation and monitoring. Article 4 of the Convention outlines the general obligations for States parties to ensure and promote the full realization of all human rights for persons with disabilities. The actions to be taken include “modify[ing] or abolish[ing] existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities,” and “adopt[ing] all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”. Among other things, this means undertaking a comprehensive review of their domestic laws, developing a national disability policy or plan, and enacting new legislation to implement all CRPD rights. Article 5 is also a key in this context as it prohibits discrimination against all persons with disabilities and obliges States parties to enact laws to ensure that persons with disabilities receive equal protection under the law.

Pacific countries are at different stages of implementing the CRPD, including the general obligations under Article 4. At their request, technical assistance was provided by ESCAP and partners to Pacific national and state Governments between 2015 and 2020 to

conduct comprehensive reviews of domestic laws for CRPD compliance. Reviews involved in-depth legal research and comprehensive analysis of national and state laws (with a focus on primary legislation and Constitutions) as well as extensive consultations and site visits. The reviews focused on eliminating disability-based discrimination in the law, protecting the rights of all persons with disabilities, and promoting disability mainstreaming across constitutional and legislative frameworks. Comments were also offered on compliance issues related to other human rights treaties and international standards, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). A total of nine reviews were conducted,<sup>1</sup> led by ESCAP in collaboration with the Pacific Islands Forum Secretariat and with the support from the Pacific Disability Forum. The reviews were supported by the United Nations Partnership on the Rights of Persons with Disability through the Pacific Enable project involving several United Nations agencies, including the International Labour Organization (ILO), Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations Children’s Fund (UNICEF), and the World Health Organization (WHO).

In 2020, ESCAP commissioned a regional legislative review of CRPD compliance in the Pacific, building on the nine completed legislative reviews in order to provide a comparative analysis.<sup>2</sup> Additional legal research was undertaken to identify significant changes to legislation since the national and state reviews, including repealed provisions, and to review newly enacted laws that have implications for disability rights and CRPD compliance. Assessments and recommendations were guided by CRPD Committee jurisprudence, including general comments, concluding observations and recommendations to countries in the Pacific.

1 Seven national reviews (Nauru, Republic of Marshall Islands, Federated States of Micronesia, Solomon Islands, Tonga, Tuvalu and Vanuatu) and two State reviews (Kosrae State and Pohnpei State of the Federated States of Micronesia).

2 ESCAP, 2021, “Inequality, discrimination and exclusion: Assessing CRPD compliance in Pacific Island legislation” by Atu Emberson-Bain, October 2021, Bangkok.



This issue of Pacific Perspectives is an abridged version of the regional report. Prepared for the wider public, it looks at key compliance issues found in legal frameworks in the Pacific, and then outlines the legislative options and opportunities that countries wishing to undertake reforms can consider. The issue

uses selected examples from countries in the region to illustrate both existing issues in, and ongoing efforts towards better alignment and harmonization with the CRPD. A more detailed analysis and tailor-made recommendations for each country are available in the regional report as well as individual country and state reviews.

### CRPD Committee Oversight and Jurisprudence

The CRPD does not contain a judicial enforcement system. However, Article 34 establishes a committee of experts – the Committee on the Rights of Persons with Disabilities (CRPD Committee) – to monitor implementation progress by States parties. The CRPD Committee is made up of members elected by States parties and nearly all of whom are persons with disabilities. The Committee provides expertise, advice and authoritative guidance on how to implement the Convention effectively, including through national disability policies and legislation. State parties to the CRPD are required to submit regular reports to the Committee on how the rights are being implemented. After examining each report, the Committee issues its "concluding observations (observations and recommendations)".

CRPD Committee jurisprudence is comprised of different components. Of particular importance, under the Optional Protocol, the Committee may consider individual communications (complaints) alleging violations or on its own initiative initiate inquiries if it has received reliable information containing well-founded indications of serious or systematic violations of the Convention. The Committee has adopted 37 views (decisions) on individual communications (complaints), addressing a wide range of procedural and substantive issues.

The CRPD Committee, like other United Nations Human Rights Treaty Committees, also publish their interpretation of the CRPD provisions. Known as General Comments, these statements unpack selected Articles for comprehensive interpretation of substantive rights and obligations. In addition, they clarify the reporting requirements of States parties and suggest approaches for implementation with regard to certain provisions. The CRPD Committee has published seven General Comments on the following issues:

- General Comment No. 1 on Article 12: Equal recognition before the law;

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